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DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-854]

Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and/or exporters of certain frozen warmwater shrimp (frozen shrimp) from India. For information on the estimated subsidy rates, *see* the “Suspension of Liquidation” section of this notice.

EFFECTIVE DATE: [Insert date of publication in the *Federal Register*.]

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Shane Subler, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0410 and (202) 482-0189, respectively.

## Background

The petitioner in this investigation is the Coalition of Gulf Shrimp Industries (Petitioner).<sup>1</sup> This investigation covers 42 government programs. In addition to the Government of India, the company respondents in this investigation are Devi Fisheries Limited (Devi Fisheries), and Devi Seafoods Ltd. (Devi Seafoods).

## Period of Investigation

The period for which we are measuring subsidies, or period of investigation, is April 1, 2011, through March 30, 2012.

## Case History

The events that have occurred since the Department published the *Preliminary Determination* on June 4, 2013,<sup>2</sup> are discussed in the Memorandum to Paul Piquado, Assistant Secretary for Import Administration, “Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from India” (Decision Memorandum).<sup>3</sup>

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<sup>1</sup> The members of the Coalition of Gulf Shrimp Industries are: Bayou Shrimp Processors, Inc.; Bluewater Shrimp Company, Inc.; Carson & Co., Inc.; C.F. Gollott & Sons Seafood, Inc.; Dean Blanchard Seafood, Inc.; Dominick Seafood; Fisherman’s Reef Packing Plant; Golden Gulf Coast Pkg. Co., Inc. (and Gollott’s Oil Dock & Ice House); Graham Fisheries, Inc.; Graham Shrimp, Inc.; Gulf Crown Seafood Co., Inc.; Gulf Fish Inc.; Gulf Island Shrimp & Seafood, LLC; Gulf Pride Enterprises, Inc.; Hi-Seas of Dulac, Inc.; Indian Ridge Shrimp Co.; JBS Packing Co., Inc.; Lafitte Frozen Foods Corp.; M&M Shrimp (Biloxi Freezing and Processing); Ocean Springs Seafood Market, Inc.; Paul Piazza & Sons, Inc.; R.A. Lesso Brokerage Co., Inc.; Sea Pearl Seafood Co., Inc.; Smith and Sons Seafood; Tidelands Seafood Co., Inc.; Tommy’s Seafood; Vincent Piazza & Sons Seafood, Inc.; Wood’s Fisheries; Mariah Jade Shrimp Company, LLC; David Chauvin’s Seafood Company, LLC; and Rountree Enterprises, Inc. (dba Leonard & Sons Shrimp Co. and R&R Fisheries).

<sup>2</sup> See *Certain Frozen Warmwater Shrimp From India: Preliminary Countervailing Duty Determination*, 78 FR 33344 (June 4, 2013) (*Preliminary Determination*).

<sup>3</sup> Public versions of all business proprietary documents and all public documents are on file electronically via Import Administration’s Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available to registered users at <http://iaaccess.trade.gov> and in the Department’s Central Records Unit (CRU), room 7046 of the main Department of Commerce building.

### Scope Comments

On March 28, 2013, Petitioner asked the Department to clarify that the scope of this investigation does not include brine-frozen shrimp.<sup>4</sup> We have addressed this request and comments thereon in the Memorandum to Paul Piquado, Assistant Secretary for Import Administration, “Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People’s Republic of China, Thailand, and Socialist Republic of Vietnam – Final Scope Memorandum Regarding Onboard Brine-Frozen Shrimp,” which is hereby adopted by this notice.

### Scope of the Investigation

This investigation covers certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off, deveined or not deveined, cooked or raw, or otherwise processed in frozen form, regardless of size. See Appendix I for a complete description of the scope of this investigation.

### Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Decision Memorandum, which is hereby adopted by this notice. A list of subsidy programs and the issues that parties have raised, and to which we responded in the Decision Memorandum, is attached to this notice as Appendix II. The Decision Memorandum is a public document and is on file electronically via IA ACCESS. In addition, a complete version of the Decision Memorandum can be accessed

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<sup>4</sup> See Letter from Petitioner, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Ecuador (C-331-803) – Request for Scope Clarification” (March 28, 2013).

directly on the Internet at <http://www.trade.gov/ia/>. The signed Decision Memorandum and the electronic version of the Decision Memorandum are identical in content.

#### Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Tariff Act of 1930 (the Act), we have calculated a rate for each company respondent. Section 705(c)(5)(A)(i) of the Act states that, for companies not individually investigated, we will determine an “all others” rate equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act.

Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the “all others” rate by weight averaging the rates of Devi Fisheries and Devi Seafoods, because doing so risks disclosure of proprietary information. Therefore, we have calculated a simple average of Devi Fisheries’ and Devi Seafoods’ rates. Since both Devi Fisheries and Devi Seafoods received countervailable export subsidies and the “all others” rate is an average based on the individually investigated respondents, the “all others” rate includes export subsidies.

We determine the total estimated net countervailable subsidy rates to be:

<b>Company</b>	<b>Subsidy Rate</b>
Devi Fisheries Limited	10.54 percent ( <i>ad valorem</i> )
Devi Seafoods Ltd.	11.14 percent ( <i>ad valorem</i> )
All Others	10.84 percent ( <i>ad valorem</i> )

As a result of our *Preliminary Determination*, and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from India that were entered or withdrawn from warehouse, for

consumption on or after June 4, 2013, the date of publication of the *Preliminary Determination* in the *Federal Register*.

In accordance with section 705(c)(1)(B)(ii) of the Act, we are directing CBP to continue to suspend liquidation of all imports of the subject merchandise from India that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*. The suspension of liquidation instructions will remain in effect until further notice. However, as discussed in the Decision Memorandum, we are adjusting the cash deposit rates to account for program-wide changes described under 19 CFR 351.526.<sup>5</sup> Therefore, we are directing CBP to require a cash deposit for entries of subject merchandise in the amounts indicated below.

<b>Company</b>	<b>Cash Deposit Rate</b>
Devi Fisheries Limited	6.16 percent ( <i>ad valorem</i> )
Devi Seafoods Ltd.	5.54 percent ( <i>ad valorem</i> )
All Others	5.85 percent ( <i>ad valorem</i> )

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty (CVD) order under section 706(a) of the Act, and we will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above.

If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. Moreover, in accordance with section 705(c)(2) of the Act, we will instruct CBP to release any bond or other security and refund any cash deposits that were collected for shipments of subject merchandise entered, or

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<sup>5</sup> See Decision Memorandum, at 9 and 19.

withdrawn from warehouse on or after June 4, 2013, the date that we instructed CBP to suspend liquidation following the *Preliminary Determination*. The interest provisions of section 778 of the Act do not apply.

#### ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

#### Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the  
Act.

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Paul Piquado  
Assistant Secretary  
for Import Administration

August 12, 2013\_\_  
Date

## APPENDIX I

### **Scope of the Investigation**

The products covered by this investigation are certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,<sup>6</sup> deveined or not deveined, cooked or raw, or otherwise processed in frozen form, regardless of size.

The frozen warmwater shrimp and prawn products included in the scope, regardless of definitions in the Harmonized Tariff Schedule of the United States (“HTSUS”), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope. In addition, food preparations (including dusted shrimp), which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope. Excluded from the scope are: (1) Breaded shrimp and prawns; (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled; (4) shrimp and prawns in prepared meals; (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns; and (7) certain “battered shrimp” (see below).

“Battered shrimp” is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product’s total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (“IQF”) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

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<sup>6</sup> “Tails” in this context means the tail fan, which includes the telson and the uropods.



The products included in the scope of this investigation are currently classified under the following HTSUS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30 and 1605.29.10.10. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope is dispositive.

## APPENDIX II

### **List of Comments and Issues in the Decision Memorandum**

- Comment 1 Whether the Department Should Investigate Petitioner's Timely Filed New Subsidy Allegation
- Comment 2 Whether the Department Should Apply Adverse Facts Available to the DEPS Program
- Comment 3 Whether the Department Should Include the Benefits Found for the DEPS Program in the Final Cash Deposit Rates
- Comment 4 Whether the Department Used the Incorrect Rate for Exports of Prepared Shrimp in Its Calculation of the Benefit Received by Devi Seafoods from the Duty Drawback Program
- Comment 5 Whether the Department Should Correct the Calculation of the Benefit Received by Devi Seafoods under the Chapter 1B Program
- Comment 6 Whether the Department used an Incorrect Benchmark in the Calculation of Pre-Shipment Benefit on Export Financing Denominated in INR
- Comment 7 Whether the Department Erred in the Calculation of the Post-Shipment INR Benefits by using the Incorrect Number of Days for Several Post-Shipment INR Loans
- Comment 8 The Determination Not to Investigate VAT Exemptions
- Comment 9 Whether the Department Improperly Omitted Sales by Satya from the Denominator when Calculating the Benefit Received

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